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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1954.

No. 415.

BELRIDGE OIL COMPANY, a California corporation,
Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation,
Appellee.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

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SUBJECT INDEX

PAGE

Finality of judgment 3

TABLE OF AUTHORITIES CITED

CASES PAGE

Keokuk Bridge Co. v. Salem, 258 U. S. 122, 42 S. Ct. 207, 66 L. Ed. 496 3

Lovell v. Griffin, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949 2

Owensboro Water Works Co. v. Owensboro, 200 U. S. 38, 26 S. Ct. 249, 50 L. Ed. 361 2

Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69, 67 S. Ct. 156, 91 L. Ed. 80 3

Wells Fargo & Co. v. Nevada, 248 U. S. 165, 39 S. Ct. 62, 63 L. Ed. 190 3

STATUTE

United States Code Annotated, Title 28, Sec. 1257 3

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BELRIDGE OIL COMPANY, a California corporation,
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CITY OF LOS ANGELES, a municipal corporation,
Appellee.

MOTION TO DISMISS.

The City of Los Angeles, a municipal corporation, appellee herein, respectfully moves that the appeal of Belridge Oil Company, a California corporation, be dismissed.

The basis of this motion is that no substantial federal question is presented.

The question decided by the Supreme Court of California, and reported in 42 Cal. 2d 823, 271 P. 2d 5, is simply that, under the laws of California, The City of Los Angeles has the power to impose the license tax in question. Thus a purely local state question is involved. No claim was made by appellant that if the State of

California itself, as distinguished from one of its state agencies, had imposed the license tax that the Constitution of the United States would be violated. In fact, the action of The City of Los Angeles in adopting and enforcing the license tax ordinance is "state action" as far as this Honorable Court is concerned. (*Lovell v. Griffin,* 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949.)

All activities of appellant having a bearing upon the imposition and computation of the tax occurred in the State of California. No question of interstate commerce is involved in this case. Appellee respectfully submits that the absence of a federal question in the case at bar is clear under the authority of *Owensboro Water Works Co. v. Owensboro,* 200 U. S. 38, 26 S. Ct. 249, 50 L. Ed. 361. That case furnishes a clear parallel. There an injunction was asked to restrain the City from allegedly using in an improper manner certain funds derived from the sale of bonds. On page 46 of the official report this Honorable Court stated as follows:

> "The utmost that can be said of the present case, as disclosed by the bill, is that the municipal authorities of Owensboro have done some things outside or in excess of any power the City possessed. But this does not of itself show that they acted without the due process of law enjoined by the 14th Amendment; for, if what is complained of had been done directly by the state or by its express authority, or if the legislature could legally ratify that which the city has done, as it undoubtedly might do, no one would contend that there had been a violation of the due process clause of the Amend-

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ment. It cannot be that the acts of a municipal corporation are wanting in the due process of law ordained by the 14th Amendment, if such acts, when done or ratified by the state, would not be inconsistent with that act."

The ordinances of The City of Los Angeles and the laws of the State of California have provided an ample opportunity to question both the amount of the tax sought to be collected and the authority of The City of Los Angeles to collect it. Where such opportunity exists there is no deprivation of property without due process and no denial of equal protection of the law.

Keokuk Bridge Co. v. Salem, 258 U. S. 122, 42 S. Ct. 207, 66 L. Ed. 496;

Wells Fargo & Co. v. Nevada, 248 U. S. 165, 39 S. Ct. 62, 63 L. Ed. 190.

Finality of Judgment.

Appellant states that this appeal is taken as a precautionary measure (Jurisdictional Statement, p. 5), basing its position on the possibility that the decision of the State Supreme Court (42 Cal. 2d 823, 271 P. 2d 5) has the effect of being a final judgment within the meaning of 28 U. S. C. A. 1257.

Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69, 67 S. Ct. 156, 91 L. Ed. 80.

Since appellee takes the position that the decision of the State Supreme Court, properly construed, leaves only ministerial acts to be performed by the Superior Court

when it enters its judgment, nothing in this motion should be construed as questioning the jurisdiction of this Honorable Court on this ground.

It is respectfully submitted that the appeal should be dismissed for lack of a substantial federal question.

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and

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